

10/20/

From: Jerry Schwoerer - RICOH

Delivery To:

( ) Bextie Schneider - RICOH

( ) Karen Laramore - RICOH

( ) Michael Laramore - RICOH

( ) Jennifer Laramore - RICOH

( ) Linda Laramore - RICOH

( ) Marlene Laramore - RICOH

( ) Jason Laramore - RICOH

( ) Sam M. Sennett - RICOH

( ) Scott C. Sennett - RICOH

( ) Tracy C. Sennett - RICOH

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The opinion in support of the decision being entered today was not /  
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CBLON, SPIVAK, McCLELLAND  
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DOCKETING DEPT. BEFORE THE BOARD OF PATENT APPEALS  
Initials/Date Docketed: \_\_\_\_\_ AND INTERFERENCES

Type of Resp(s): \_\_\_\_\_  
Due Date(s): \_\_\_\_\_

**Ex parte** MARKUS BAUMEISTER, STEFFEN HAUPTMANN and KARIN KLABUNDE

MAILED

APR 10 2006

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Application No. 09/841,965

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on March 30, 2006. An in-depth review has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

On August 17, 2005, appellants filed an Appeal Brief under the rules set forth in 37 CFR § 41.37(c). 37 CFR § 41.37(c) states in-part:

The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section . . .

.....

(ix) **Evidence appendix.** An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) **Related proceedings appendix.** An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

The Appeal Brief reveals that the following sections are missing:

- (1) "**Evidence Appendix,**" as set forth in 37 CFR § 41.37(c)(1)(ix).
- (2) "**Related Proceedings Appendix,**" as set forth in 37 CFR § 41.37(c)(1)(x).

A supplemental brief that is in compliance with 37 CFR § 41.37(c) is required. For more information on the Board's new rules see the web page entitled "More Information on the Rules of Practice Before the BPAI, Final Rule" at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

Further, the Examiner's Answer, mailed November 22, 2005, is deemed non-compliant with the new rules set forth in the **Manual of Patent Examining Procedure (MPEP)** § 1207.02. The application

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reveals that the following content is missing from the Examiner's Answer in the order and with the context stated in the Rules:

Section "**(8) Evidence Relied Upon**," fails to list the relevant references applied in the rejections on appeal. Correction is required pertaining to the headings and content required in the Examiner's Answer.

Accordingly, it is

**ORDERED** that the application is returned to the examiner to:

- have the appellants submit a supplemental Appeal Brief in compliance with the new rules set forth in 37 CFR § 41.37(c);
- submit a revised Examiner's Answer in accordance with the **MPEP** § 1207.02; and
- for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
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DALE M. SHAW  
Program and Resource Administrator  
(571) 272-9797

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cc: OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

DMS:hh